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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 18, 1998

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996
CC Docket No. 96-128
<u>Notice of Ex Parte Communication</u>

Dear Ms. Roman Salas:

On behalf of Mobile Telecommunication Technologies Corp. ("Mtel"), this notice is submitted in accordance with Section 1.1206(a)(2) of the Commission's rules, with the original and one copy being submitted to the Commission's Secretary.

On this date, Thomas Gutierrez and Justin McClure, both representing Mtel, met with Commissioner Harold W. Furchtgott-Roth and Kevin J. Martin, Commissioner Furchtgott-Roth's legal advisor, and made a permissible oral ex parte presentation concerning the above docket.

At the meeting, argument was presented consistent with Mtel's argument in its Petition for Reconsideration and Comments filed in the captioned proceeding, and consistent with the attached discussion outline. No additional arguments or issues were presented.

Kindly contact the undersigned, should you or your staff have any questions in regard to this matter.

Very truly yours,

Thomas Gutierrez

TG:cms
cc: Kevin J. Martin, Esq.

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February 18, 1998

PRESENTATION BY MOBILE TELECOMMUNICATION TECHNOLOGIES CORP. TO THE OFFICE OF COMMISSIONER FURCHTGOTT-ROTH IN THE MATTER OF IMPLEMENTATION OF THE PAY TELEPHONE RECLASSIFICATION AND COMPENSATION PROVISIONS OF THE TELECOMMUNICATIONS ACT OF 1996 - CC DOCKET NO. 96-128

I. Commission's "Market Rate" of 28.4¢ is unjust

The Commission erred in holding that the Court of Appeals endorsed the market-based approach as set forth in the Commission's Second Report and Order. The "market rate" is simply not applicable where, in a called-party pays system, the caller cares not about the "market rate" borne by the called party.

*The Commission's use of a market based compensation rate creates a windfall for PSPs at the expense of long distance carriers and 800 service subscribers which is inconsistent with both the decision of the U.S. Court of Appeals for the DC Circuit and the fair compensation standard of Section 276 and should be reduced to a true cost-based rate.

*The Commission's continued reliance on $0.35 (which was the highest rate among the deregulated payphone markets reviewed by the Commission) as the market rate for local coin service is arbitrary.

*Payphone compensation for subscriber 800 and access code calls should be cost-based--not market-based--and should be determined by the cost to payphone providers of originating such calls or the cost of a coin call minus coin costs.

*Payphone provider costs were vastly overstated. Data from SBC indicate that SBC's total cost for a coin call amounts to $0.162 - less than half of the $0.40 figure proffered by the Independent Payphone Providers and relied upon by the Commission in setting the default per-call compensation rate. Further, Sprint estimates that a call based approach would yield a per-call compensation rate in the range of six cents per call.

*Callers have virtually no choice in payphones at any particular location and there is no reason to believe that the use of market based rates can effect a change this situation.

*Even with as little as two payphone calls per day, the FCC's default rate will add nearly $20 per month to a paging customer's bill, with absolutely no added services or benefits for the consumer from the paging company. If paging carriers begin losing their customers due to increased costs, it will not be due to "market" forces, but rather, FCC regulatory edict.

II. Call Blocking

The Common Carrier Bureau's (the "Bureau") grant of a waiver of the Payphone Service Provider requirement to provide data sufficient to permit call blocking under the Commission's carrier pays compensation scheme is internally inconsistent and arbitrary and capricious.

*The Commission continues to rely on the viability of call blocking as the basis for its market-based approach to payphone compensation while at the same time effectively precluding IXCs from offering call blocking by denying them the technical information necessary for implementation.

*The Commission's much-vaunted "competitive leverage" argument lacks a critical factual underpinning, namely the economic viability of blocking. The Commission has examined the availability of call blocking only in terms of technological feasibility. Call blocking, however, will not be deployed and used unless it is affordable.

*Without the ability to refuse calls, paging carriers will also lack the competitive leverage—much touted by the Commission—as a means for negotiating alternative compensation arrangements.

*As the nation's supply of 800 numbers began to erode, the FCC's Common Carrier Bureau recommended that paging carriers employ "PIN code" 1-800 service, rather that issuing individual 800 numbers to each customer. The problem with PIN codes is that it is impossible to block and/or track payphone calls to individual paging customers, since they are sharing one phone number.

*Call blocking is not a viable business option for most 800 subscribers because their businesses are dependent upon customers being able to access their number from all payphones.

*As the DC Circuit observed, "blocking is hardly an ideal option for the IXCs, for it is not only expensive to implement. . .but its use will invariably will result in a mutual loss of business for both PSPs and the IXCs. 117 F.3d 555 at 564. Call blocking severs a key revenue stream, limiting business options and leaving customers disgruntled.

*According to the Commission, there are nearly <u>7 million</u> small entity 800-subscribers and paging companies that may be affected by the payphone decisions. These entities will be required to pay whatever rate is imposed by IXCs to block calls from payphones (thereby harming their businesses) in order to avoid paying compensation.

III. **The Issue of "Calling Party"** **Pays Must Be Revisited**

A. At the heart of the problem with any carrier pays scheme is the fact that a true "market" approach is simply not applicable where the caller cares not about the "market rate" that is borne by some other party. Unlike the local coin market in which calls are always initiated by the person responsible for payment of associated charges, in the coinless market, a toll free caller has no incentive whatsoever to seek a more affordable alternative.

*The only true market-based surrogate for 800 subscriber and access code calls is a calling party pays mechanism.

*Payphone service providers would actually make more money under a "caller pays" scheme since they will be collecting 35 cents per call instead of 28.4 cents per call and the IXC's and paging carriers would be released from the enormous burdens of attempting to comply with the Commission's unwieldy carrier pays requirements.

*The payphone market is not, and may never be, competitive because the pay telephone industry currently is one based on locational monopolies. Unlike loaves of bread on a grocery store shelf, pay telephones provided by <u>different</u> payphone service providers seldom line the walls at a single location, allowing an individual to comparison shop. To the contrary, customers who need a payphone take what they can get, where they can get it - which typically means no choice at all at a particular location.

*The market relationships and dynamics which underlie a market based compensation approach rest upon the ability of a caller -- not a carrier or 800 subscriber -- to impose market discipline on PSPs by either agreeing or refusing to pay the PSPs price for the use of the phone at the time the call is made.

*It is simply not realistic to assume callers will identify multiple payphones at multiple locations before selecting the most cost-effective alternative.

B. A "carrier pays" system is more burdensome and costly than a caller pays system and imposes significant burdens on virtually every participant in the payphone market other than the caller.

*Paging carriers are presently faced with the choice of either trying to absorb the cost of potentially ruinous compensation obligations or discontinuing a key component of their service to paging customers—the ability to call a paging carrier's 800 number to collect messages. If paging carriers limit their exposure to these charges by discontinuing subscriber 800 services or trying to pass along these costs, they will inevitably lose customers. Exorbitant activation and recurring charges for call blocking also threaten the long-term financial well-being of paging companies.

*A simple cost recovery mechanism is already in place for all calls made from a pay phone - the use of a coin deposit mechanism and the Commission's imposition of exorbitant system modifications and multiple billings is quite unnecessary.

*Callers of toll-free numbers expect that they will not be required to pay for the long distance toll charges associated with their calls, not necessarily that they will have the free use of a payphone.

C. The FCC's basic assumption about a carrier's "pass through" ability has no merit if the customer that incurs the charge cannot be timely located and billed.

*The "carrier pays" rules are causing unjust and unreasonable billing practices. If and when itemized payphone charges are available, paging customers may be receiving bills for payphone charges more than six months after the charges are incurred, through no fault of the paging carrier. The FCC has found that billing delays of this magnitude could be considered unjust and unreasonable. If the billing information is stale, paging carriers will be stuck with enormous payphone charges that their customers will refuse to pay or either the customers may no longer be subscribers at that time.

D. Should the Commission maintain its ill conceived "carrier pays" approach, the Commission must revise its compensation arrangements to reflect a measured rate that accounts for varying call lengths.

*Like all other calls, 1-800 calls vary in length from call to call. Paging calls last, on average, only ten percent as long as other calls. Yet, the default rate established by the Commission does not take into account call duration in assessing the appropriate default compensation rate. As a result, called parties are made to pay the same charge for a very brief paging call as is necessary for a much longer communication.[1/] This treatment is wholly at odds with the

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1/ This inequity can be illustrated easily. Assume that two persons place 1-800 calls from different payphones at the same airport. The first places a single five minute call, and the PSP is compensated 28.4 cents by the called party. The second person places a series of 1-800 paging calls during the same five minute span. The second PSP is compensated many times as much as the first one. Yet, both phones were "rented" for the same period of time.

manner in which interexchange calls and the vast majority of lease arrangements, all of which involve some concept of a measured rate. The Second Report and Order does not explain why this key distinction was not taken into consideration in assessing what is fair and equitable to PSPs. The effect of this is to vastly inflate the "fair" compensation that paging carriers must pay.

IV. Conclusion

While Congress instructed the FCC to be "fair" toward payphone service providers, it did not inform the agency to be "unfair" to paging carriers. Unlike payphone service providers, paging licensees have paid more than their fair share of FCC regulatory costs throughout the years. They pay licensing fees, annual regulatory fees, TRS fund fees, penalties for non-compliance with FCC licensing rules, Universal Service fees, and FCC auction fees. At the local level, paging carriers are additionally paying state and local "wireless carrier" taxes, "right of way" fees, and the usual panoply of business taxes.